



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
**COMMISSION ON WATER RESOURCE MANAGEMENT**  
P.O. BOX 621  
HONOLULU, HAWAII 96809

**STAFF SUBMITTAL**

**COMMISSION ON WATER RESOURCE MANAGEMENT**

October 19, 2021  
Honolulu, Hawai‘i

Approve Order to Wailuku Water Company, LLC and Waikapu Properties, LLC to  
Halt Delivery of Water to Kumu Farms from Reservoir 1,  
Waikapū Stream, Nā Wai ‘Ehā, Maui

**SUMMARY OF REQUEST**

In accordance with the Commission on Water Resource Management’s (Commission) Decision and Order in contested case hearing CCH-MA15-01, staff is requesting that the Commission order Wailuku Water Company, LLC and Waikapū Properties, LLC to halt delivery of water to Kumu Farms from Reservoir 1.

**LEGAL AUTHORITY**

Under the State Water Code (Code), the Commission has the responsibility of investigating and taking appropriate actions with regards to citizen complaints within or outside of a water management area. HRS §174C-13. If any person files a complaint with the Commission that any other person is wasting or polluting water or is making a diversion, withdrawal, impoundment, consumptive use of waters or any other activity occurring within or outside of a water management area, not expressly exempted under this code, without a permit where one is required, the commission shall cause an investigation to be made, take appropriate action, and notify the complainant thereof.

**BACKGROUND**

On April 17, 2014, under contested case hearing CCH-MA06-01, the Commission issued an Order adopting the; 1) Hearings Officer’s Recommendation on the Mediated Agreement Between the Parties; and 2) Stipulation re Mediator’s Report of Joint Proposed Findings of Fact, Conclusion Of Law, Decision and Order. The Order established an interim instream flow standard of 2.9 mgd for Waikapū Stream.

In December 2017, Commission staff installed a continuous streamflow gage at the 915 ft. elevation on Waikapū Stream. The gage was upgraded to real-time monitoring in January 2018.

In October 2020, the Commission staff began receiving reports that WWC had installed a new valve on the pipe release to the South Waikapū ‘Auwai from Reservoir 1, resulting in no water being received by kuleana users.

On June 1, 2021, WWC contacted Commission staff regarding worsening drought conditions and sought emergency relief to increase diversion of water from Waikapū Stream to Reservoir 1. In a letter from Chairperson Suzanne Case, dated June 4, 2021, WWC’s request for emergency relief was denied (Exhibit 1).

On June 28, 2021, the Commission issued its Findings of Fact, Conclusions of Law, and Decision and Order (D&O) in contested case hearing CCH-MA15-01 regarding the Surface Water Use Permit Applications, Integration of Appurtenant Rights and Amendments to the Interim Instream Flow Standards, Na Wai Eha Surface Water Management Areas of Waihee, Waiehu, Iao and Waikapu Streams, Maui. In its D&O, regarding the management of the WWC delivery system and the South Waikapū ‘Auwai, the Commission set forth the following provisions:

D&O, pp. 305-307, Line 39:

- B. Appurtenant Rights and Surface Water Use Permits (SWUPs)
  - 39. SWUPA 2157 – Wailuku Water Company
    - b. As a condition of this permit, WWC is required to gage and continuously monitor with the installation of a parshall flume or a Commission staff approved water meter, at the following locations:
      - 1. Diversions:
        - i. South Waikapu Ditch at Reservoir 1 (CWRM gage 6-1)
      - 2. Distribution Points:
        - vi. South Waikapū ‘Auwai
    - c. WWC shall ensure that the following quantity of water is delivered to the following distribution points in the indicated amounts based on SWUPs that will be issued as a result of this decision. The amounts to be delivered shall be provided at all times unless identified in Tables 1-3, supra, or determined by the Commission to be an emergency:
      - vi. South Waikapū ‘Auwai – 0.265 mgd

D&O, p. 360, Lines 207-208:

- F. Management of Kuleana Systems, Lines 207 thru 208:
  - 207. WWC and Mahi Pono are responsible to maintain their ditches to the point of delivery of water into the kuleana ditch or pipe system, with maintenance of the kuleana ditches and pipes the responsibility of the users.
  - 208. Monitoring of the amount of water diverted into kuleana systems shall be done by WWC and Mahi Pono, as set forth herein, except where the water is diverted directly from the stream. Where the kuleana system diverts directly from a stream, it shall be the collective responsibility of the kuleana system users to

monitor and report the amount of water diverted from the stream. The quantity of water that may be collectively diverted is based on the SWUPs issued pursuant to this decision. The amounts to be delivered shall be provided at all times unless determined by the Commission to be an emergency.

D&O, pp. 305, Lines 35-36:

- B. Appurtenant Rights and Surface Water Use Permits (SWUPs)
35. In awarding water for traditional and customary practices, and especially providing water for lo‘i kalo, the users of traditional ‘auwai will be responsible to ensure that the ‘auwai are sufficient to handle the flow for the initial users and all down ‘auwai users as well.
36. The Commission also encourages the ‘auwai users to engage in collective stewardship of the ‘auwai systems to use the allocated water responsibly, both in times of abundance and more importantly during times of scarcity.

D&O, p. 361, Lines 209-213:

- F. Management of Kuleana Systems
209. The Commission advises kuleana users on unlined ‘auwai systems to consider improving system efficiencies and reducing loss by lining or piping, including but not limited to South Waikapū ‘Auwai, South Waihe‘e ‘Auwai, and ‘Īao-Maniania Ditch.
210. In the pre-Māhele period, kuleana lands frequently contained pō‘alima which the occupants worked for the konohiki, chief, or king, and maintenance of the ditches was a collective responsibility. Present-day kuleana owners/users retain mutual responsibility for the maintenance of the kuleana ditches and pipes and to share the waters that flow in mutually used kuleana ditches and pipes.
211. The resuscitation of kuleana lands for lo‘i kalo is not only to allow individual kuleana to grow kalo through traditional practices but to do so in mutual cooperation and labor with neighboring kuleana, and a regulatory approach only solidifies the present focus on one’s own kuleana irrigation needs.
212. The modern-day “konohiki” must have the skills to shepherd kuleana occupants toward agreed mutual sharing of both water and the improvement and maintenance of the kuleana ditches and pipes. Such an endeavor is a long-term activity, entailing “konohiki” that are both knowledgeable of lo‘i kalo irrigation practices and efficient sharing of water. The Commission acknowledges the work kuleana permittees have put in to develop the social bonds that in pre-Māhele days resulted in extensive lo‘i kalo that these occupants are attempting to revive.
213. The Commission encourages the kuleana permittees, community groups, and agencies to assist in the development of a community or hui style of management for these kuleana ‘auwai to develop the community-sharing system that is needed to revive Nā Wai ‘Ehā as the premier wetland kalo producer not only on Maui, but throughout the State (See FOF 264, 269, 271-272, 275, 285-286).

In July and August 2021, WWC reported vandalism of the emergency control gate from Reservoir 1 to release more water into the South Waikapū ‘Auwai. WWC notified Commission

staff that they would temporarily shut down ditch flows into Reservoir 1 to install a hollow-tile wall to seal off additional releases to the South Waikapū ‘Auwai.

On August 10, 2021, letters were sent to WWC and the South Waikapū ‘Auwai users informing them of the provisions set forth in the Commission’s D&O (Exhibits 2 and 3).

On August 11, 2021, Commission staff received a Complaint/Dispute Resolution Filing Form (Complaint) from Hui o Nā Wai ‘Ehā (Hui), regarding the lack of water to the South Waikapū ‘Auwai and downstream kuleana users not receiving any water (Exhibit 4). A Notice of Complaint/Dispute Resolution was sent to Wailuku Water Company on August 25, 2021, seeking a response (Exhibit 5). A response from Wailuku Water Company was received on September 8, 2021 (Exhibit 6).

The Complaint was also forwarded to ‘auwai user Clayton Suzuki on August 27, 2021 (Exhibit 7), and to representatives of Waikapu Properties, LLC on September 7, 2021 (Exhibit 8) seeking responses to specific issues raised in the Complaint. In the letter to Waikapu Properties, LLC, the Commission staff noted the following from the D&O:

D&O, p. 188, Line 427:

Line 427. SWUPAs 2205, 2356/2297N, 3471N, and 3472N—Waikapu Properties

m. Counsel for Waikapu Properties subsequently entered into discussions with counsels for OHA and Hui/MTF to modify and clarify Waikapu Properties’ water request. Following those negotiations and in light of Waikapu Properties’ abilities to re-allocate field usage because of the return of the ‘Īao-Waikapū fields, it filed a first amendment to SWUPAs 2356/2297N, 3471N, and 3472N as follows:

1. Reduction in the request to 81,794 gpd, from Waikapū Stream, a 96 percent decrease.
2. Change in the types of crops being grown from coffee to organic produce and row crops.
3. Water requested from Waikapū Stream for Kumu Farms’ 18 acres for organic row crops will continue only until such time as substitute fields are certified organic, at which time the water allocation for those 18 acres will be reduced to that necessary for drinking water for cattle at 250 gad.
4. Water requested for feed and forage for cattle to be replaced by drinking water only.
5. All farming operations will be relocated to areas makai of the Waihe‘e Ditch such that no surface water is needed from Waikapū Stream other than 250 gad for drinking water for cattle.
6. Ho‘aloha Farms will be entitled to water and harvest crops that are currently in-ground above Waihe‘e Ditch and which utilize water from Waikapū Stream, and will transition to lands below Waihe‘e Ditch and off of Waikapū Stream as such crops are harvested.

Responses were received from Clayton Suzuki on September 9, 2021 (Exhibit 9), and Waikapu Properties, LLC on September 21, 2021 (Exhibit 10).



On September 21, 2021, Commission staff briefed the Commission at its regular monthly meeting regarding the status of Waikapū interim instream flow standard compliance and water availability issues on the South Waikapū Kuleana ‘Auwai. The briefing can be viewed at the following link (<https://files.hawaii.gov/dlnr/cwrn/submittal/2021/sb20210921B1.pdf>), along with testimony (<https://files.hawaii.gov/dlnr/cwrn/submittal/2021/sb20210921B1T.pdf>).

On September 24, 2021, Commission staff conducted a site visit with Mr. Clayton Suzuki to look into use his diversion of water from the South Waikapū ‘Auwai, use of his sand filters, and the return of backflush water from the sand filters back to the ‘auwai (See Photos 1 and 2).

**Photos 1 and 2.**



1) Clayton Suzuki prepares to backflush his sand filters, located nearly one mile below Reservoir 1..



2) Water released back to the ‘auwai from the backflush of Clayton Suzuki’s sand filters.

On September 28, 2021, staff conducted field investigations with: 1) Mr. Avery Chumbley of WWC to look at the South Waikapū Ditch and Reservoir 1 system, the Parshall flume installed in the South Waikapū ‘Auwai, and method for measuring flow into the South Waikapū ‘Auwai using a timed, 5-gallon bucket method; and 2) Hōkūao Pellegrino, Emilou Alves, and Crystal Smythe of the Hui and kuleana water users on the South Waikapū ‘Auwai to walk portions of the ‘auwai and understand how users receive water and where the water flow stopped.

**Photos 3 and 4.**



3) Water is released from a valved pipe from Reservoir 1 into the South Waikapū ‘Auwai..



4) A Palmer Bowlus Flume sits in the South Waikapū ‘Auwai approximately 150 ft. below the release valve.



During the investigation, staff conducted a visual inspection of portions of the South Waikapū ‘Auwai from Reservoir 1 to Clayton Suzuki’s intake (Photos 5 and 6). Staff also observed WWC staff conduct a measurement of the water released to the ‘auwai (Photo 7). The calculated flow using the bucket method was 298,000 gallons per day (gpd). However, the Palmer Bowlus (PB) flume located approximately 150 feet below the water release indicated an estimated flow of 350,000 gpd. WWC recognizes that the PB flume is oversized and currently has one on order, but is experiencing delays in manufacturing due to the pandemic.

**Photos 5 to 8.**



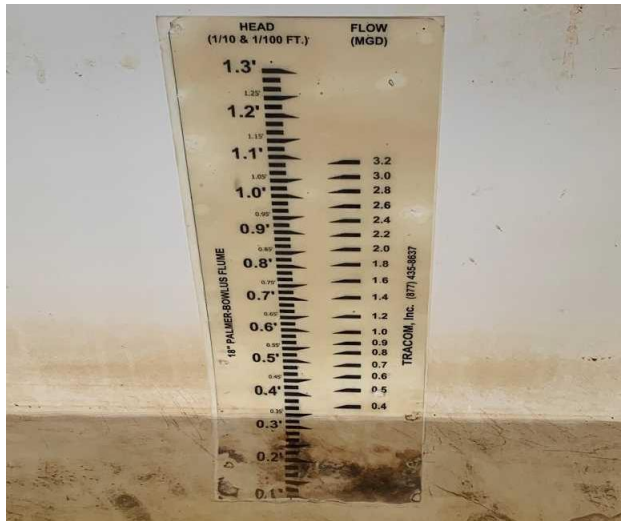
5) Upper portion of the unlined South Waikapū ‘Auwai (looking downstream).



6) Middle section of the unlined South Waikapū ‘Auwai (looking upstream). Pipe at left is return water (backflush) from sand filters for the agricultural and cattle operations.



7) Avery Chumbley and Wailuku Water Company staff measure flow from the South Waikapū ‘Auwai release valve using a 5-gallon bucket.



8) Close-up of the gage reading on the Palmer Bowlus flume located in the South Waikapū ‘Auwai.



Later during the field investigation, staff met with Hōkūao Pellegrino, Emilou Alves and Crystal Smythe and walked the lower portion of the South Waikapū ‘Auwai from the Alves property to the location where water drops down from the ‘auwai running adjacent to Waikapū Properties’ service road, into the lower ‘auwai segment (approximately the last 0.25 miles to the Alves property). After the water drops into the lower ‘auwai segment, water runs for approximately 250 feet before stopping. About 700 feet from where the water stops, the ‘auwai splits toward the Alves property and Smythe’s upper taro lo‘i fields.

**Photos 9 to 12.**



9) Water drops from the ‘auwai running adjacent to the Waikapu Properties’ service road, approximately 0.75 miles below Reservoir 1, into the lower section of the South Waikapū ‘Auwai.



10) Water from the ‘auwai drop makes a sharp right turn and continues flowing down the ‘auwai (view looking upstream).



11) An old section of a County water line sits in the ‘auwai, where the water stops flowing approximately 900 feet before the Alves property.



12) Hōkūao Pellegrino and Emilou Alves stand in a dry segment of the South Waikapū ‘Auwai just above her property.



## ANALYSIS

The Commission's D&O notes that counsel for Waikapu Properties, through negotiations with counsel for the Office of Hawaiian Affairs and Hui/Maui Tomorrow Foundation, agreed that "Water requested from Waikapū Stream for Kumu Farms' 18 acres for organic row crops will continue only until such time as substitute fields are certified organic, at which time the water allocation for those 18 acres will be reduced to that necessary for drinking water for cattle at 250 gad;" and "All farming operations will be relocated to areas makai of the Waihe'e Ditch such that no surface water is needed from Waikapū Stream other than 250 gad for drinking water for cattle."

As a result of these negotiations, the Commission allocated water in the amount of 643,250 gpd for a total 257.3 acres to Kumu Farms for diversified agriculture. The source was designated as the Waihe'e Ditch. This amount is included as part of the total new use permit, in the amount of 1,815,937 gpd to Waikapu Properties.

Kumu Farms, in its response to the Commission and through their counsel Horovitz Tilley LLC dated September 21, 2021 (Exhibit 10), stated that water is only being provided as drinking water to livestock owned by farming tenants, Makani Olu Ranch and Beef and Blooms. Furthermore, Kumu Farms indicates that, "There are currently no farming operations on the mauka side of the Waihe'e Ditch. All farming operations have been moved to the makai side of the Waihe'e Ditch and/or to the makai side of Honoapiilani Highway. Kumu Farms is in the process of finalizing infrastructure that would allow it to transition to pumping water from the Waihe'e Ditch."

The Commission staff, through discussions in the field with Avery Chumbley on September 28, 2021, learned that WWC is continuing to provide water, via a main line from Reservoir 1, to Kumu Farms in the amount of 75,000 to 125,000 gpd. However, per the Commission's D&O, the only water from Waikapū Stream should be going to the cattle operations mauka of Waihe'e Ditch and the South Waikapū 'Auwai users (totaling 265,188 gpd), including Ho'okahi Alves (Miyashiro Trust), John Minamina Brown Trust/Crystal Smythe, Trustee, George & Yoneko Higa, Teruo Kamasaki (Garner), Clayton Suzuki, and Nadao Makimoto (Harger)

In discussing potential solutions to address the lack of water experienced by South Waikapū 'Auwai users at the September 28, 2021 field investigation, it was suggested that kuleana users could potentially receive water from a lateral off the main line from Reservoir 1, directly to the lower reach of the South Waikapū 'Auwai. This proposed solution would considerably minimize loss in the currently unlined 'auwai as it flows down approximately 1.0 mile from Reservoir 1. This is an alternative to the previously discussed option of releasing water directly from the emergency release gate from Reservoir 1, which would prioritize water to kuleana users but continue to experience seepage loss from use of the unlined 'auwai.

The Commission staff notes that this is only a short-term solution, while a long-term solution is sought given Waikapu Properties' plans to further develop a portion of its lands as housing for Maui residents at noted in the Commission's D&O (Findings of Fact 427). Additionally, the

main line from Reservoir 1 experiences high pipe pressures due to the steep gradient and change in elevation resulting in occasional blowouts of the piped system.

It is the understanding of Commission staff, that representatives of the Hui are actively engaging with Waikapu Properties to purchase portions, if not all, of the South Waikapū Ditch including easements. Should this sale proceed, Waikapu Properties would continue to work with the Hui and South Waikapū ‘Auwai users to implement a piped system from Reservoir 1 to deliver water to a lower portion of the ‘auwai (near Mr. Clayton Suzuki’s sand filters).

However, the Hui is still committed to seeking a long-term solution, as identified in its Complaint filed on August 11, 2021 (Exhibit 4), to restore the original ancient kuleana ‘auwai that connects directly to Waikapū Stream. The Hui notes that the traditional ‘auwai still remains, but is partially overgrown and the traditional po‘owai (intake) is situated on Avery Chumbley’s property. The Hui believes that this would be the best solution to increase system efficiency and enable the South Waikapū kuleana users to be completely independent from the old plantation irrigation system.

### RECOMMENDATIONS

Staff recommends that the Commission:

- 1) Order Wailuku Water Company, LLC and Waikapū Properties, LLC to halt delivery of water to Kumu Farms from Reservoir 1.

Ola i ka wai,



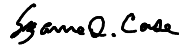
M. KALEO MANUEL  
Deputy Director

### Exhibits:

1. Letter to Wailuku Water Company, LLC, dated June 4, 2021.
2. Letter to Wailuku Water Company, LLC, dated August 10, 2021, re South Waikapū Ditch and Management of Kuleana Systems.
3. Letter to South Waikapū ‘Auwai Users, dated August 10, 2021, re South Waikapū Ditch and Management of Kuleana Systems.
4. Complaint/Dispute Resolution Filing Form filed by Hui o Nā Wai ‘Ehā, dated July 30, 2021.
5. Notice of Complaint/Dispute Resolution to Wailuku Water Company, LLC, dated August 25, 2021.
6. Complaint/Dispute Resolution Response Form from Wailuku Water Company LLC, dated September 8, 2021.
7. Notice of Complaint/Dispute Resolution to Clayton Suzuki, dated August 27, 2021.
8. Notice of Complaint/Dispute Resolution to Waikapu Properties, LLC and MTP Operating Co., LLC, dated September 7, 2021.

9. Response letter from Clayton Suzuki, dated September 9, 2021.
10. Response letter from Horovitz Tilley LLC, dated September 21, 2021.

APPROVED FOR SUBMITTAL:

A handwritten signature in black ink, appearing to read "Suzanne D. Case".

SUZANNE D. CASE  
Chairperson

October 19, 2021

DAVID Y. IGE  
GOVERNOR OF HAWAII



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SUZANNE D. CASE  
CHAIRPERSON

KAMANA BEAMER, PH.D.  
MICHAEL G. BUCK  
ELIZABETH A. CHAR, M.D.  
NEIL J. HANNAHS  
WAYNE K. KATAYAMA  
PAUL J. MEYER

M. KALEO MANUEL  
DEPUTY DIRECTOR

June 4, 2021

Mr. Avery B. Chumbley  
Wailuku Water Company, LLC  
P.O. Box 2790  
Wailuku, HI 96793

Aloha Avery,

Mahalo for notifying the Commission about the current situation in Waikapū, the impacts that you are facing to meet the needs of the users on the Wailuku Water Company system from Reservoir 1. While we empathize with the farmers and off-stream needs of users, the Commission also has to take into account and balance that with the needs of the stream during low-flow periods like the one we are experiencing now. That balance was determined in the Commission's decision and order in 2014 by establishing the current interim instream flow standard (IIFS) of 2.9 mgd in Waikapū Stream. Mahalo for your compliance with that decision. Based on our Waikapū stream gage, the stream is measuring a flow of approximately 2.2 mgd, well below the IIFS.

At this time, we recommend that you work with your system and customers to look at other source alternatives to meet your needs during this time. If those alternatives include use of water from the Waihe'e Ditch, please ensure that you are also complying with the IIFS set for Wailuku River, Waiehu Stream, and Waihe'e Stream.

If you have any other questions or if there are other ways we can assist at this time, please feel free to contact Kaleo Manuel, Deputy Director, at [kaleo.l.manuel@hawaii.gov](mailto:kaleo.l.manuel@hawaii.gov).

Sincerely,

A handwritten signature in cursive script that reads "Suzanne D. Case".

Suzanne D. Case  
Chairperson

cc: *via email*

Kamana Beamer, Commissioner  
Michael Buck, Commissioner  
Elizabeth Char, Commissioner  
Neil Hannahs, Commissioner  
Wayne Katayama, Commissioner  
Paul Meyer, Commissioner

DAVID Y. IGE  
GOVERNOR OF HAWAII



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M. KALEO MANUEL  
DEPUTY DIRECTOR

August 10, 2021

Ref: *SWUP.2157.6*

Avery B. Chumbley  
Wailuku Water Company  
P.O. Box 2790  
Wailuku, HI 96793  
abc@aloha.net

Dear Mr. Chumbley:

South Waikapū Ditch and Management of Kuleana Systems  
Na Wai 'Ehā Surface Water Management Area, Maui

The Commission on Water Resource Management (Commission) acknowledges receipt of your complaint on July 24 and August 2, 2021, regarding alleged vandalism and damage to the Wailuku Water Company's emergency release gate on Reservoir No. 1 and related to the release of water to the South Waikapū Ditch system.

On June 28, 2021, the Commission issued its Findings of Fact, Conclusions of Law, and Decision & Order in Contested Case Hearing CCH-MA15-01 (D&O). The D&O may be reviewed at: <https://dlnr.hawaii.gov/cwrn/newsevents/cch/cch-ma15-01/>.

While the Commission staff is currently working on the issuance of Surface Water Use Permits, the Commission would like to remind Wailuku Water Company (WWC) of the requirements imposed in the D&O and the conditions of WWC's pending permit. Pursuant to the D&O, WWC is required to manage its delivery system in accordance with the following conditions in the D&O provided below (excerpted in relation to the South Waikapū Ditch):

D&O, pp. 305-307, Line 39:

B. Appurtenant Rights and Surface Water Use Permits (SWUPs)

39. SWUPA 2157 – Wailuku Water Company

- b. As a condition of this permit, WWC is required to gage and continuously monitor with the installation of a parshall flume or a Commission staff approved water meter, at the following locations:
  1. Diversions:
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  2. Distribution Points:



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Page 2

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207. WWC and Mahi Pono are responsible to maintain their ditches to the point of delivery of water into the kuleana ditch or pipe system, with maintenance of the kuleana ditches and pipes the responsibility of the users.

208. Monitoring of the amount of water diverted into kuleana systems shall be done by WWC and Mahi Pono, as set forth herein, except where the water is diverted directly from the stream. Where the kuleana system diverts directly from a stream, it shall be the collective responsibility of the kuleana system users to monitor and report the amount of water diverted from the stream. The quantity of water that may be collectively diverted is based on the SWUPs issued pursuant to this decision. The amounts to be delivered shall be provided at all times unless determined by the Commission to be an emergency.

A separate letter has been forwarded to the South Waikapū Ditch users informing them of their responsibilities per the Commission’s D&O.

D&O, pp. 305, Lines 35-36:

B. Appurtenant Rights and Surface Water Use Permits (SWUPs)

35. In awarding water for traditional and customary practices, and especially providing water for lo‘i kalo, the users of traditional ‘auwai will be responsible to ensure that the ‘auwai are sufficient to handle the flow for the initial users and all down ‘auwai users as well.

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maintenance of the kuleana ditches and pipes and to share the waters that flow in mutually used kuleana ditches and pipes.

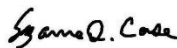
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213. The Commission encourages the kuleana permittees, community groups, and agencies to assist in the development of a community or *hui* style of management for these kuleana ‘auwai to develop the community-sharing system that is needed to revive Nā Wai ‘Ehā as the premier wetland kalo producer not only on Maui, but throughout the State (*See* FOF 264, 269, 271-272, 275, 285-286).

Thank you for your attention to these matters as we continue to work through the implementation of the Commission’s D&O. If you have any questions, contact Dean Uyeno at (808) 587-0234, or via email at dean.d.uyeno@hawaii.gov.

Sincerely,



SUZANNE D. CASE  
Chairperson

cc: James Geiger, Mancini, Welch, & Geiger LLP, jgeiger@mrwlaw.com  
Paul Mancini, Mancini, Welch, & Geiger LLP, pmancini@mrwlaw.com

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AURORA KAGAWA-VIVIANI, PH.D.  
WAYNE K. KATAYAMA  
PAUL J. MEYER

M. KALEO MANUEL  
DEPUTY DIRECTOR

August 10, 2021

Dear South Waikapū 'Auwai Users:

South Waikapū Ditch and Management of Kuleana Systems  
Na Wai 'Ehā Surface Water Management Area, Maui

The Commission on Water Resource Management (Commission) is in receipt of a complaint by Wailuku Water Company on July 24 and August 2, 2021, regarding alleged vandalism and damage to the Wailuku Water Company's emergency release gate on Reservoir No. 1 and related to the release of water to the South Waikapū Ditch system.

On June 28, 2021, the Commission issued its Findings of Fact, Conclusions of Law, and Decision & Order in Contested Case Hearing CCH-MA15-01 (D&O). The D&O may be reviewed at: <https://dlnr.hawaii.gov/cwrm/newsevents/cch/cch-ma15-01/>.

While the Commission staff is currently working on the issuance of Surface Water Use Permits, the Commission would like to remind South Waikapū 'Auwai users of the requirements and recommendations contained in the D&O. Pursuant to the D&O, South Waikapū 'Auwai users are encouraged to manage this unlined 'auwai system in accordance with the following recommendations in the D&O provided below:

D&O, p. 305, Lines 35-36:

B. Appurtenant Rights and Surface Water Use Permits (SWUPs)

35. In awarding water for traditional and customary practices, and especially providing water for lo'i kalo, the users of traditional 'auwai will be responsible to ensure that the 'auwai are sufficient to handle the flow for the initial users and all down 'auwai users as well.

36. The Commission also encourages the 'auwai users to engage in collective stewardship of the 'auwai systems to use the allocated water responsibly, both in times of abundance and more importantly during times of scarcity.

D&O, p. 361, Lines 209-213:

F. Management of Kuleana Systems

209. The Commission advises kuleana users on unlined 'auwai systems to consider improving system efficiencies and reducing loss by lining or piping, including but not limited to South Waikapū 'Auwai, South Waihe'e 'Auwai, and 'Iao-Maniania Ditch.

South Waikapū ‘Auwai Users  
August 10, 2021  
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210. In the pre-Māhele period, kuleana lands frequently contained pō‘alima which the occupants worked for the konohiki, chief, or king, and maintenance of the ditches was a collective responsibility. Present-day kuleana owners/users retain mutual responsibility for the maintenance of the kuleana ditches and pipes and to share the waters that flow in mutually used kuleana ditches and pipes.

211. The resuscitation of kuleana lands for lo‘i kalo is not only to allow individual kuleana to grow kalo through traditional practices but to do so in mutual cooperation and labor with neighboring kuleana, and a regulatory approach only solidifies the present focus on one’s own kuleana irrigation needs.

212. The modern-day “konohiki” must have the skills to shepherd kuleana occupants toward agreed mutual sharing of both water and the improvement and maintenance of the kuleana ditches and pipes. Such an endeavor is a long-term activity, entailing “konohiki” that are both knowledgeable of lo‘i kalo irrigation practices and efficient sharing of water. The Commission acknowledges the work kuleana permittees have put in to develop the social bonds that in pre-Māhele days resulted in extensive lo‘i kalo that these occupants are attempting to revive.

213. The Commission encourages the kuleana permittees, community groups, and agencies to assist in the development of a community or *hui* style of management for these kuleana ‘auwai to develop the community-sharing system that is needed to revive Nā Wai ‘Ehā as the premier wetland kalo producer not only on Maui, but throughout the State (*See* FOF 264, 269, 271-272, 275, 285-286).

A separate letter has been forwarded to Wailuku Water Company informing them of the requirements imposed in the D&O and the conditions of WWC’s pending surface water use permit. Pursuant to the D&O, WWC is required to manage its delivery system in accordance with the following conditions in the D&O provided below (excerpted in relation to the South Waikapū Ditch):

D&O, pp. 305-307, Line 39:

B. Appurtenant Rights and Surface Water Use Permits (SWUPs)

39. SWUPA 2157 – Wailuku Water Company

- b. As a condition of this permit, WWC is required to gage and continuously monitor with the installation of a parshall flume or a Commission staff approved water meter, at the following locations:
  - 1. Diversions:
    - i. South Waikapu Ditch at Reservoir 1 (CWRM gage 6-1)
  - 2. Distribution Points:
    - vi. South Waikapū ‘Auwai
- c. WWC shall ensure that the following quantity of water is delivered to the following distribution points in the indicated amounts based on SWUPs that will be issued as a result of this decision. The amounts to be delivered shall be provided at all times unless identified in Tables 1-3, *supra*, or determined by the Commission to be an emergency:
  - vi. South Waikapū ‘Auwai – 0.265 mgd

South Waikapū 'Auwai Users  
August 10, 2021  
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D&O, p. 360, Lines 207-208:

F. Management of Kuleana Systems, Lines 207 thru 208:

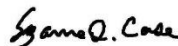
207. WWC and Mahi Pono are responsible to maintain their ditches to the point of delivery of water into the kuleana ditch or pipe system, with maintenance of the kuleana ditches and pipes the responsibility of the users.

208. Monitoring of the amount of water diverted into kuleana systems shall be done by WWC and Mahi Pono, as set forth herein, except where the water is diverted directly from the stream. Where the kuleana system diverts directly from a stream, it shall be the collective responsibility of the kuleana system users to monitor and report the amount of water diverted from the stream. The quantity of water that may be collectively diverted is based on the SWUPs issued pursuant to this decision. The amounts to be delivered shall be provided at all times unless determined by the Commission to be an emergency.

The Commission staff understands that there may be considerable loss once water is released from Reservoir No. 1 into the unlined South Waikapū 'Auwai. Per the Commission's recommendations, we strongly urge the users on the South Waikapū 'Auwai system to work together to find solutions that will reduce water loss and improve system efficiency particularly in light of recent drought conditions.

Thank you for your attention to these matters as we continue to work through the implementation of the Commission's D&O. If you have any questions, contact Dean Uyeno at (808) 587-0234, or via email at dean.d.uyeno@hawaii.gov.

Sincerely,



SUZANNE D. CASE  
Chairperson

cc: Clayton and Linda Suzuki, P.O. Box 2577, Wailuku, HI 96793,  
cssuzuki@hawaiiantel.net  
Brad Harger and Karen Parish, P.O. Box 1071, Wailuku, HI 96793,  
brad.karen@gmail.com  
Emilou C. Alves Family Trust, P.O. Box 245, Pu'unēnē, HI 96784  
Crystal Smythe, 727 Wainee Street, Suite 104, Lahaina, HI 96761,  
nalanismythe@yahoo.com  
George and Yoneko Higa, 592 S. Papa Avenue, Kahalui, HI 96732



**State of Hawaii**  
**COMMISSION ON WATER RESOURCE MANAGEMENT**  
**Department of Land and Natural Resources**

**COMPLAINT / DISPUTE RESOLUTION**  
**FILING FORM**

**Instructions:** Please print in ink or type and send completed form with attachments to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. For further information and updates to this application form, visit <http://dlnr.hawaii.gov/cwrm/>.

**For Official Use Only:**

Complaint File No: C

1. Name: Hui o Nā Wai 'Ehā Date: July 30, 2021  
Address: 213 West Waikō Road  
Wailuku, Hawai'i 96793  
Daytime Phone No.: (808) 430-4534 Fax No. N/A
2. Location of the violation or water problem: Waikapū Stream  
Tax Map Key: Waikapū (3-6-004-003 & 3-6-003-001)  
Landowner's Name: Waikapū Properties LLC & Hana'ula Ranch LLC  
Landowner's Address: P.O. Box 1870 Manteca, CA 95336 & 1962 Wells St. Wailuku, HI 96793  
Landowner's Phone No.: (209) 601-4187
3. The party I have a complaint about or dispute with is: (if more than one party, please attach additional sheets)  
Name: Wailuku Water Co.  
Address: P.O. Box 2790  
Wailuku, Hawai'i 96793  
Phone No.: (808) 244-7079, (808) 276-3595

If the party is not the landowner listed in Section 2 above, please describe the party's relationship to the TMK parcel described in Section 2.

Regarding this issue, Wailuku Water Co. is not the land owner for which the violations are occurring on, however WWC has an easement with the current landowner; Hana'ula Ranch LLC and Waikapū Properties over the S. Waikapū Intake, Ditch System and Reservoir #1. Furthermore, WWC manages and maintains the aforementioned system and infrastructure that delivers water to both on-stream and kuleana users.



4. Describe the complaint or reason for the dispute:

(Attach a sketch or photograph if that will help explain the problem.)

In October 2020, Hui o Nā Wai 'Ehā received multiple calls from Native Hawaiian South Waikapū Kuleana Kalo Farmers (Crystal Smyth and Ho'okahi Alves) regarding a lack of water or no water at all flowing in the South Waikapū Kuleana 'Auwai which receives water from the South Waikapū Diversion Intake, Ditch and Reservoir #1 and ultimately feeds more than 3 active areas/properties being farmed in lo'i kalo. South Waikapū Kuleana Users conducted a site visit to Reservoir #1 where a 6" pipe that feeds the kuleana ditch resides and observed a newly installed valve, lock and chain by WWC. Very little water was flowing out of the pipe in 2020-2021 compared to that in previous years and yet in-flows into reservoir were averaging 0.4 to 1 mgd.



12-9-2019 (No WWC Valve and lock)



10-23-2020 (WWC Installed Valve & Lock)



7-28-2021 (WWC Installed Valve & Lock)

According to South Waikapū Kuleana Users, many who have lived on their 'āina from birth and are genealogically connected to their kuleana lands have never experienced their water literally being "cut off and locked out" of water flowing into South Waikapū Kuleana 'Auwai, even in past droughts which have occurred pre and post CWRM 2014 IIFS Ruling on Waikapū Stream. Data provided by Wailuku Water Co. in 2007 which was during one of Maui's severe droughts along with active cultivation of sugarcane by HC&S on Waikapū Field #735 off of S. Waikapū Ditch, shows that South Waikapū Kuleana Users were being provided with 840,000 mgd. See WWC from September 12, 2007 figures below.

| 12-Sep-2007 |          | Wailuku Water Company<br>"Kuleana" Users |            |                             |  |
|-------------|----------|--|------------|-----------------------------|--|
| Kuleana     | Gauged:  | Flows: MGD                               | TMK:       | Owners                      |  |
|             |          |  |            |                             |  |
| Reservoir 1 | No Gauge | 840,000                                  | 3-6-05: 19 | David Kaliponi              |  |
|             |          |  | 3-6-06: 01 | Barbara Pawn                |  |
|             |          |  | 3-6-06: 09 | Clayton Suzuki Trust        |  |
|             |          |  | 3-6-06: 13 | Clayton Suzuki Trust        |  |
|             |          |  | 3-6-06: 17 | Barbara Pawn                |  |
|             |          |  | 3-6-06: 21 | Mae Balmores/Nadao Makimoto |  |
|             |          |  | 3-6-06: 22 | Sakae & Bernadette Inouye   |  |
|             |          |  | 3-6-06: 24 | David Kaliponi              |  |
|             |          |  | 3-6-06: 25 | Elaine Mullaney             |  |
|             |          |  | 3-6-06: 27 | Jinsei & Patrica Miyashiro  |  |
|             |          |  | 3-6-06: 29 | Elaine Mullaney             |  |
|             |          |  | 3-6-06: 33 | Barbara Pawn                |  |
|             |          |  | 3-6-06: 42 | Sharlee Diequez             |  |

Hui o Nā Wai 'Ehā notified CWRM Deputy Director Kaleo Manuel and Hydrologist Ayrton Strauch by phone as well as email on this particular issue on October 24 and October 30, 2020. The response that we received was that Kaleo was going to discuss this issue with Chair Case and Attorney General. Photographs as well as flow data was also shared in regards to how much water was entering Reservoir #1 and photographs of kuleana ditch valve from Reservoir #1. CWRM Staff, Hui o Nā Wai 'Ehā and S. Waikapū kalo farmers conducted site visits through October 2020 to June 2021 and observed different conditions such as 1) normal stream flow, normal ditch flow and low to no flow in S. Kuleana 'Auwai 2) low stream flow, ditch flow and low to no flow in S. Kuleana 'Auwai 3) low stream flow, no flow in ditch-reservoir and no flow in S. Waikapū Kuleana 'Auwai. Deputy Director Kaleo Manuel mentioned in March 2021 that there may be a possibility to address this issue at a Water Commission Meeting and the possibility of doing a Minute Order, however that did not happen. It was later stated that State Attorney General advised CWRM that the Water Commission could only address IIFS issues and not water deliver agreements, but made it clear that the Contested Case D&O would "sort this out". See Exhibit A.

As of today, July 30, 2021, 32 days after the Contested Case D&O Decision was announced, South Waikapū Kuleana kalo farmers still have no water reaching their lo‘i kalo. While the Final D&O did grant water permits for South Waikapū Kuleana kalo farmers and other users as well as a priority use system, Wailuku Water Company has failed to provide any water to these kuleana users even under the new variable IIFS set by the D&O to address drought conditions. Hui o Nā Wai ‘Ehā is extremely disappointed in the Commission’s Final D&O which provides no such detailed implementation plan which would “sort out” this issue that has now been dragging on 9 months without any relief or enforcement. Hui o Nā Wai ‘Ehā and Community members not just in Waikapū but throughout Nā Wai ‘Ehā were under the impression that the D&O would address these issues around water allocation, access and enforcement.

There are multiple factors that are causing no amount of water reaching the South Kuleana Kalo Farmers. Hui o Nā Wai ‘Ehā has explained to CWRM countless times that there is a ditch system problem, prioritization use problem and water restriction issue due to WWC installing a valve and lock on the kuleana intake pipe which has never existed there until 2020. The way to fix this issue is outlined in the proposed resolution section of our complaint. We cannot reiterate enough that in order to ensure this system is resolved, a site visit by all parties must be completed to understand the problem as a whole. While we are trying our best to explain via data collected for 7+ months, photo documentation and diagrams, it suite everyone if CWRM can schedule a site visit to understand the problem in real-time to understand where the Hui is coming from in terms of resolving this issue once and for all.



Average Reservoir 1 Flow Measurements in July 2021 (post-CWRM Final D&O = 250,000-350,000 GPD)



5. Describe how your water usage or water rights are specifically affected by the other party, if at all:

There are now a total of 7 South Waikapū Ditch Users that were granted water under the CWRM Final D&O that in total are allocated 267,026 GPD. That is 6 users less and 572,974 GPD less than what was documented by WWC and used in 2007. 2 of the 7 (Smyth & Alves) have received the highest priority designation under the CWRM Final D&O, meaning that they have New Uses, Existing Uses, Domestic Uses, Appurtenant Rights and Traditional and Customary Native Hawaiian Rights. Yet, these 2 users (Smyth & Alves) have not seen a drop of water in their lo'i since May 2021 and very little to no water between October 2020 and now.

**CWRM June 28, 2021 D&O Table (Not in User Order):**

| #            | User                       | WUPA        | Appurtenant  | Domestic | T&C    | Priority | Amount (GPD)       |
|--------------|----------------------------|-------------|--------------|----------|--------|----------|--------------------|
| 1            | Waikapū Properties LLC     | 2356E/2297N | No           | No       | No     | 3        | 1,838              |
| 2            | Colin Ka'iliponi           | 2336E/2337N | Denied       | Denied   | Denied | N/A      | 0                  |
| 3            | Alves (Miyashiro)          | 2260E/2261N | Yes          | Yes      | Yes    | 1        | 75,600             |
| 4            | J. Minamina Brown (Smythe) | 2217E/2218N | Yes          | Yes      | Yes    | 1        | 173,100            |
| 5            | George & Yoneko Higa       | 2366N       | Yes          | Yes      | No     | 1        | 2,500              |
| 6            | Robyn Garner (Kamasaki)    | 2368N       | Yes          | Yes      | No     | 1        | 1,675              |
| 7            | Clayton Suzuki             | 2155E       | Extinguished | Yes      | No     | 1 or 2   | 10,850             |
| 8            | Brad Harger (Makimoto)     | 2156E       | Yes          | Yes      | No     | 1        | 1,463              |
| <b>TOTAL</b> |                            |             |              |          |        |          | <b>267,026 GPD</b> |

**SEE EXHIBIT A for Schematic Map of Users**

It is important to note that the South Waikapū Ditch / Kuleana System is very complicated to understand if CWRM Staff have not conducted site visits. For example, Clayton Suzuki, during his tenure as Vice President of Wailuku Water Co., installed his own private system within the South Waikapū Ditch/‘Auwai above all other kuleana users and kalo farmers which includes a filtration system, 0.45 miles of 2” pipe and sand filters. This was a major point of contention during the first and second Contested Case that never received any attention by Commissioners and/or staff. This system still exists today and the minimal water that being released by Wailuku Water Co. goes directly into his private system and a trickle of nothing going beyond. See Exhibit C for Suzuki Private System. We bring this issue up regarding Suzuki because he has constantly received water while no matter how little or large the flow is in the ditch because he has placed his system substantially higher up from all of the users, yet the location of his TMK is in the same vicinity as the other users on the system. Furthermore, Waikapū Properties LLC which has the lowest priority is also receiving water before any of the other kuleana users/kalo farmers receive water through the ‘auwai, specifically for cattle water troughs.



Clayton Suzuki private intake, water filtration system and pipeline within S. Waikapū Kuleana ‘Auwai 0.45 miles above downstream kuleana users and Native Hawaiian Kalo Farmers

6. Date the problem was first noticed: October 5, 2020

7. If this complaint or dispute is related to a water source, was the water source previously declared with the Commission on Water Resource Management?

X Yes    ☐ No    ☐ Don't Know

If yes, what was the name and tax map key of the source?

3-6-003-001 (Waikapū)

8. Have you had any communication with the party/parties described in Section 3 above?

X ☐ Yes    No

If yes, list the communications and dates: (Attach copies if written communications were made)

Hui communication on behalf of the South Waikapū Kuleana Users as well as Kuleana Users Communication has been directly with CWRM, specifically with Deputy Director Kaleo Manuel and staff members Dean Uyeno and Ayron Strauch between October 2020 and May 2021 via emails.

9. Have you sought resolution of this matter with any other entity?

(e.g., government agency, judicial body, or private entity)

Yes, Hui o Nā Wai 'Ehā has asked CWRM Deputy Director on countless occasions to look into this matter and help the Native Hawaiian Kuleana Kalo farmers in addressing the issues around the recently installed valve and locks by WWC on their kuleana water and the lack of water. Ayron Strauch, CWRM Staff made 1 site visit on March 1, 2021 to measure ditch flows.

If so, with whom and what was the outcome?

(Please provide copies of any documentation of this process)

Hui o Nā Wai 'Ehā and South Waikapū Kuleana 'Auwai Users were always told that the D&O would address these issues. However, the D&O did not address this issue whatsoever and now 32 days after the D&O was rendered, there is no relief in sight for the Kuleana Users, except for Clayton Suzuki and Waikapū Properties.

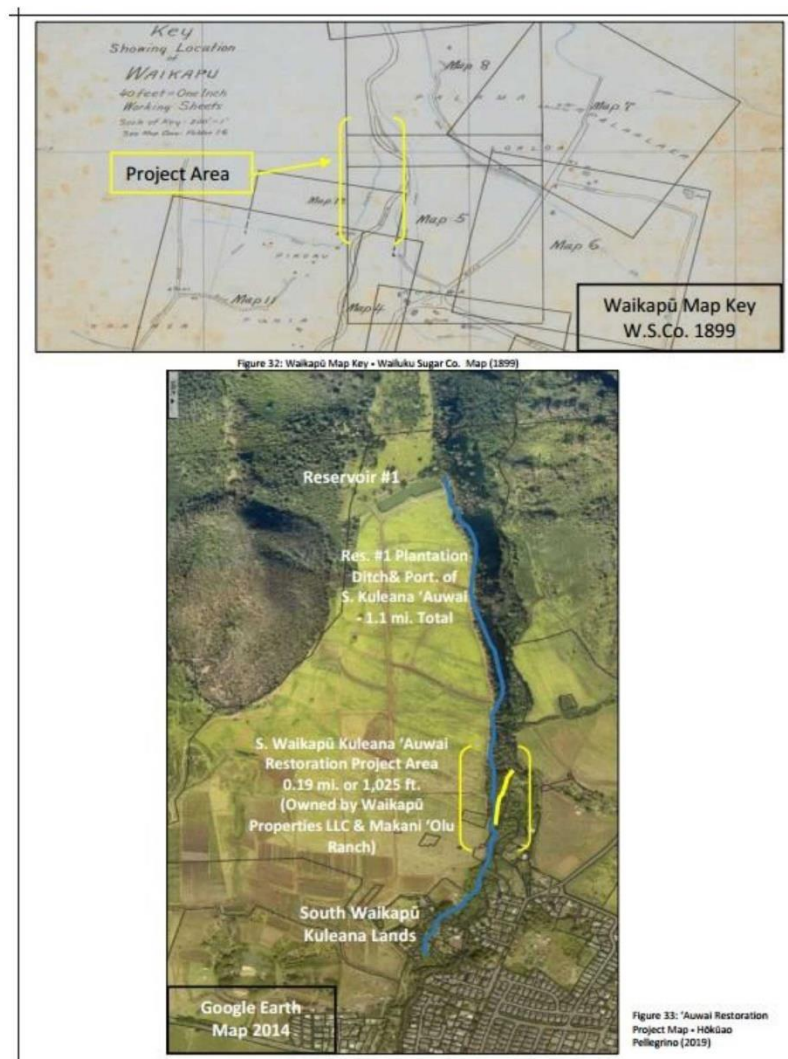
10. Describe what you believe a successful and fair remedy might be:  
Now that the CWRM Final D&O is in place and addresses the amount of water allocated per Water User Permittee, an implementation plan needs to be set forth, something we were hoping the D&O would have addressed but didn't whatsoever. Hui o Nā Wai 'Ehā has a solution that can be immediately implemented with minor modifications to the current plantation system and a long term solution that would take the South Waikapū Kuleana Users off the plantation system and be independent and connected directly to the Waikapū Stream as they were prior to 1905.
- 1) South Waikapū Ditch Intake according to the Final D&O under normal flow conditions and/or during variable IIFS conditions, should not be diverting more than 267,026 GPD. The Hui has observed 500,000 down to 200,000 GPD flowing into Reservoir 1 between June 1 and July 30 2021. Being that Reservoir 1 is unlined and large in size, it takes a certain amount of water to fill up in order to pressurize and or flow in the Kuleana 'Auwai Pipe (which now has a valve and lock) before entering the ditch. This is the first problem that needs to be resolved if this plantation system is to remain in place for the time being. There is a sluice gate prior to Reservoir 1 that can allow water to flow into the kuleana 'auwai. That gate should be modified to allow for 265,188 GPD (1,838 GPD subtracted for Waikapū Properties LLC) to flow into kuleana ditch directly. Waikapū Properties was only granted 1,838 GPD which we strongly feel no longer justifies filling up an entire reservoir for that use let alone, allowing thousands of gallons to evaporate/percolate into the ground due to it not being lined. Droughts have demonstrated the need for more efficient systems and the Hui believes that this is a worthy solution implement. This would allow cleaner and colder water to reach the kuleana users along with a more efficient way of delivering water instead of waiting and wasting water in Reservoir 1 to fill up. Even if 267,026 GPD is flowing into Reservoir #1, by no means is that amount flowing out via the 6" locked valve pipe entering the kuleana 'auwai below. Please refer to Exhibit A for area circled before Reservoir #1 as well as photo below. Part of this solution would also need to address the priority uses on the users on the kuleana 'auwai ditch. Clayton Suzuki's private intake is very large and has the capacity to take more water than is allowed in his permit which ultimately limits the water for traditional and customary Native Hawaiian uses and kalo farming below. Furthermore, his sand filters when cleaned out, dumps massive amounts of residue and sediment into the 'auwai causing blockages and debris into lo'i kalo systems. CWRM staff should require WWC to implement this solution immediately and to provide relief for kuleana users especially of those with highest priority use such as the Alves and Smyths.



Sluice Gate immediately before Reservoir #1 that can flow directly into S. Waikapū kuleana ditch. Refer to Exhibit A for explicit location on schematic map.



2) Long term solution for South Waikapū Kuleana Users and Kalo Farmers. Allow for kuleana users to restore the original ancient kuleana 'auwai that connects directly to the Waikapū Stream and allow for them to manage the system directly, similar to that of the North Waikapū Kuleana Users. The traditional 'auwai still remains but is partially overgrown, however the traditional po'owai / intake is situated on Avery Chumbley's property and he has made it clear to adjacent large land owner and owner of a portion of the ancient kuleana 'auwai, Mike Atherton of Waikapū Properties LLC, that he would never allow this to happen, holding the South Waikapū Kuleana farmers hostage and in his control only. The Waikapū Community and Hui o Nā Wai 'Ehā have been wanting to make this happen for over 3 years however, according to Mike Atherton, Mr. Chumbley has refused to allow this to happen. This would be the best solution because the 'auwai and po'owai are 0.85 miles below/downstream of Reservoir #1 and the system would be much more efficient and would allow Waikapū kuleana farmers (both north and south) to be completely independent of the Wailuku Water Co. old plantation system. We brought this up throughout the Contested Case and yet it never was it addressed. We urge CWRM investigate this solution and help the Hui, Kuleana Users and WWC make this happen. This would put the responsibility on the kuleana users to ensure they get water without having to deal with WWC's inability to manage their system properly and efficiently. Below is a diagram showing current and proposed restoration areas.



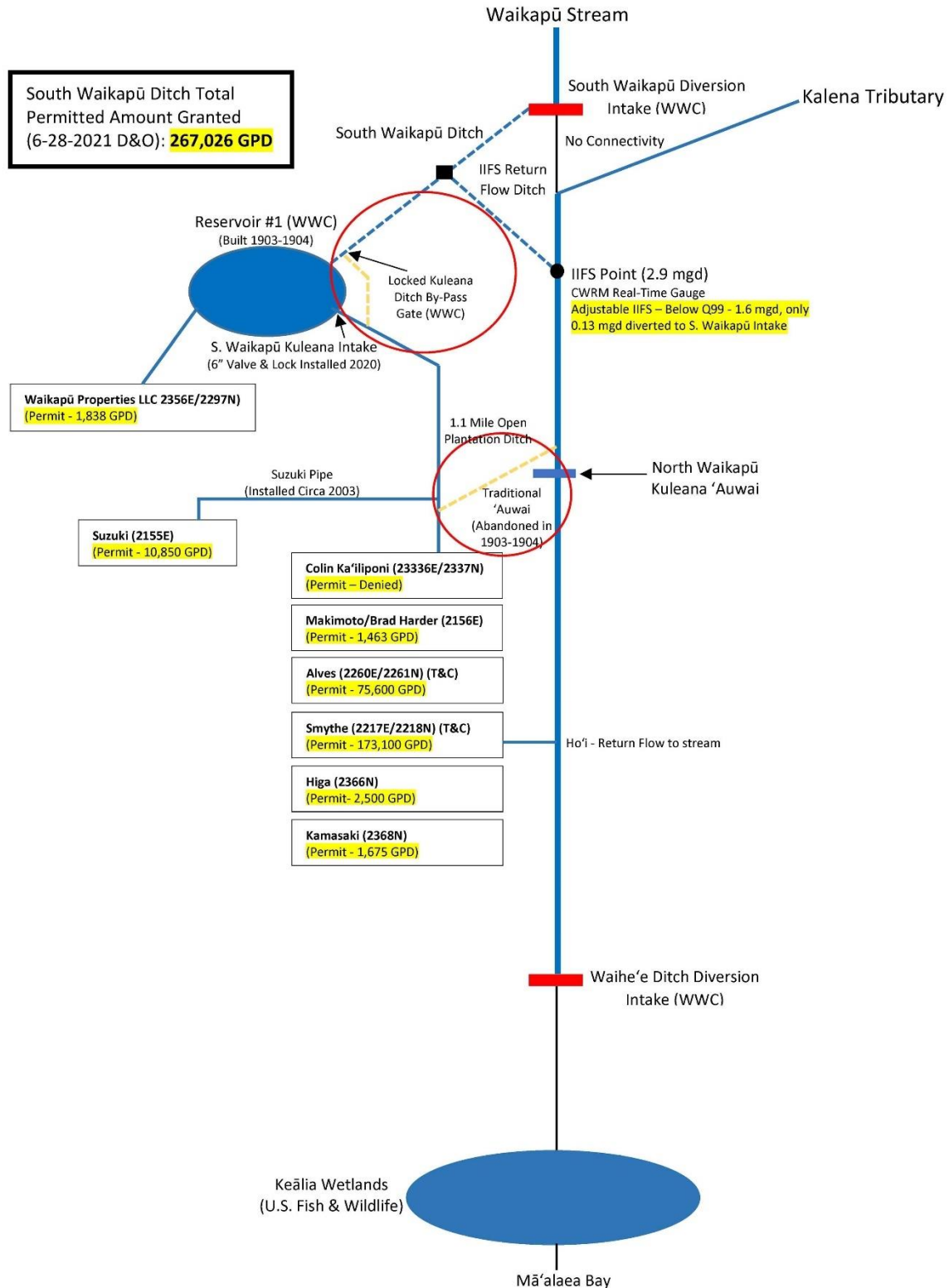
I request that the Commission on Water Resource Management assist in resolving the matter described herein.

|   |                      |
|---|----------------------|
| <u><i>Abelardo Pellegrino</i></u> (On behalf of Hui o Nā Wai 'Ehā & South Waikapu Kuleana Kalo Farmers) | <u>July 30, 2021</u> |
| Signature   | Date                 |



## South Waikapū Intake System & Users Diagram

(Created by Hui o Nā Wai 'Ehā – 7/30/2021)



October 19, 2021

DAVID Y. IGE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
**COMMISSION ON WATER RESOURCE MANAGEMENT**  
P.O. BOX 621  
HONOLULU, HAWAII 96809

SUZANNE D. CASE  
CHAIRPERSON

MICHAEL G. BUCK  
ELIZABETH A. CHAR, M.D.  
NEIL J. HANNAHS  
AURORA KAGAWA-VIVIANI, PH.D.  
WAYNE K. KATAYAMA  
PAUL J. MEYER

M. KALEO MANUEL  
DEPUTY DIRECTOR

August 25, 2021

Ref: CDR.5378.6

CERTIFIED COPY MAIL IS FORTHCOMING  
RETURN RECEIPT REQUESTED

Avery Chumbley  
Wailuku Water Company, LLC  
P.O. Box 2790  
Wailuku, HI 96793

Aloha Mr. Chumbley:

NOTICE OF COMPLAINT / DISPUTE RESOLUTION  
Lack of Water in the South Waikapū Kuleana 'Auwai  
Waikapū Stream, Wailuku, Maui

This is to inform you that a complaint has been filed with the Commission on Water Resource Management (Commission) regarding a lack of water or no water flowing in the South Waikapū Kuleana 'Auwai, which receives water from the South Waikapū Diversion Intake, Ditch, and Reservoir No. 1, managed collectively by Wailuku Water Company (WWC).

The Commission is formally forwarding a copy of the completed Complaint / Dispute Resolution Filing Form (Complaint) received electronically on August 11, 2021 and filed by Hui o Nā Wai 'Ehā.

The complaint alleges that WWC has prioritized other users of the South Waikapū Ditch system ahead of South Waikapū Kuleana 'Auwai users, who have established appurtenant rights, and that WWC has failed to provide sufficient water to the South Waikapū Kuleana 'Auwai.

Enclosed is a Complaint / Dispute Resolution Response Form. Please complete the items as thoroughly and clearly as possible. The information you supply will serve to enhance our understanding of the issues at hand and hopefully facilitate our investigation. Please return the completed form by Wednesday, September 8, 2021.

If you have any questions or need help filling out the form, please call our Stream Protection and Management Branch at (808) 587-0234.

Ola i ka wai,

A handwritten signature in black ink, appearing to read "M. KALEO MANUEL".

M. KALEO MANUEL  
Deputy Director



**State of Hawaii**  
**COMMISSION ON WATER RESOURCE MANAGEMENT**  
**Department of Land and Natural Resources**

**COMPLAINT / DISPUTE RESOLUTION**  
**RESPONSE FORM**

**Instructions:** Please print in ink or type and send completed form with attachments to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. For further information and updates to this application form, visit <http://dlnr.hawaii.gov/cwrm/>.

**For Official Use Only:**

**RECEIVED**  
Commission on Water Resource Management  
3:09 pm, September 8, 2021

Complaint File No: C

*Please answer any applicable questions to the best of your knowledge. This is a standard form and some questions may not pertain to your specific situation.*

1. Name: Wailuku Water Company LLC Date: September 8, 2021  
Address: P. O. Box 2790  
Wailuku, Hawaii 96793  
Daytime Phone No.: 808/244-7079 Fax No. 808/242-7068
2. Were you aware of the problem prior to this complaint? ☐ Yes ☐ No
3. Tax Map Key: Unknown  
*If you are not the owner, please provide the landowner's information below.*  
Landowner's Name: Unknown  
Landowner's Address: Unknown  
Landowner's Phone No.: Unknown
4. If this complaint or dispute is related to a water source on your property, was the water source previously declared with the Commission on Water Resource Management?  
☐ Yes ☐ No ☐ Don't know

If yes, what is the name and tax map key of the source?

The items raised in the Complaint dated July 30, 2021 do not fall within the provisions of HAR 13-167-82, rendering this Question and the request for a Response outside the authority vested in the Commission under a Citizen Complaint. See attached.



5. Attach a sketch or photograph that will give additional details of the situation described by the complainant.

The items raised in the Complaint dated July 30, 2021 do not fall within the provisions of HAR 13-167-82, rendering this Question and the request for a Response outside the authority vested in the Commission under a Citizen Complaint. See attached.

6. Have you had any communication with the complainant(s)?

☐ Yes ☐ No

If yes, list the communications and dates: (Attach copies if written communications were made)

The items raised in the Complaint dated July 30, 2021 do not fall within the provisions of HAR 13-167-82, rendering this Question and the request for a Response outside the authority vested in the Commission under a Citizen Complaint. See attached.

7. Do you know if resolution of this matter has been sought with any other entity? (e.g., government agency, judicial body, or private entity)

☐ Yes ☐ No ☐ Don't Know

If so, with whom and what was the outcome? Please provide copies of any documentation of this process.

The items raised in the Complaint dated July 30, 2021 do not fall within the provisions of HAR 13-167-82, rendering this Question and the request for a Response outside the authority vested in the Commission under a Citizen Complaint. See attached.

8. Describe what you believe a successful and fair remedy might be:

The items raised in the Complaint dated July 30, 2021 do not fall within the provisions of HAR 13-167-82, rendering this Question and the request for a Response outside the authority vested in the Commission under a Citizen Complaint. See attached.

I attest that the information given is accurate and complete, to the best of my knowledge.

  
Signature

AVERY B. CHUMBLEY

September 8, 2021  
Date

Attachment to Complaint / Dispute Resolution Response Form  
of Wailuku Water Company LLC

By letter of August 25, 2021, the Deputy Director of the Commission on Water Resource Management provided a copy of a Complaint filed by Hui o Na Wai Eha regarding a lack of water or no water flowing in the South Waikapu Kuleana Auwai. Additionally, the Complaint asserted that Wailuku Water Company LLC prioritized other users of the South Waikapu Ditch system ahead of the South Waikapu Kuleana Auwai users and failed to provide sufficient water to the South Waikapu Kuleana Auwai.

Wailuku Water Company LLC (Company) provided information and participated in a video conference with the Deputy Director, Commission staff, and the Deputy Attorney General advising the Commission. Through that process, Company learned that the Complaint was being treated as a Citizen Complaint.

Section 13-167-82, HAR, instructs that a Citizen Complaint must involve a) wasting water; b) polluting water; c) making a diversion without a permit where one is required; d) making a withdrawal without a permit where one is required; e) making an impoundment without a permit where one is required; f) making consumptive use without a permit where one is required; or g) any other activity without a permit where one is required.

As to the first issue identified by the Deputy Director, i.e. a lack of water or no water flowing in the South Waikapu Kuleana Auwai, the item is not a claim of wasting water, polluting water, diverting water without a permit, withdrawing water without a permit, impounding water without a permit, consumptive use of water without a permit or any other activity without a permit.

Similarly, as to the second issue identified by the Deputy Director, i.e. prioritization of users of the South Waikapu Ditch system ahead of South Waikapu users, the item is not a claim of wasting water, polluting water, diverting water without a permit, withdrawing water without a permit, impounding water without a permit, consumptive use of water without a permit or any other activity without a permit.

Finally, as to the third issue identified by the Deputy Director, i.e. failure to provide sufficient water to the South Waikapu Kuleana Auwai, the item is not a claim of wasting water, polluting water, diverting water without a permit, impounding water without a permit, consumptive use of water without a permit or any other activity without a permit.

As such, the Complaint to which the Deputy Director requested a response is not appropriate for review as a Citizen Complaint under HAR Section 13-167-82 and this Commission has no authority to require the Company to respond to the issues being raised by the Hui o Na Wai Eha.

Company notes that a fair reading of the Complaint shows that the issues being raised deal primarily with dissatisfaction that the Decision and Order entered by the Commission on June 28, 2021 did not address implementation issues. Those issues should have been raised in a motion to reconsider or clarify the Decision and Order.

While not within the scope of HAR Section 13-167-82, Company provided information to the Deputy Director and Commission staff on its compliance with the Decision and Order, and specifically paragraph 39.c. of the Decision and Order (p. 307) at which the Company was directed to deliver 0.265 mgd of water to the South Waikapu Auwai distribution point. The Company was directed to install either a parshall flume or meter to gage and monitor the water delivered at the distribution point. The Company started the process of complying with the directive; additionally, since issuance of the Decision and Order, the Company periodically measured the water delivered at the distribution point by means of a “bucket test”, a method of measurement authorized under the Decision and Order. The dates and results of the measurements were:

|           |          |
|-----------|----------|
| 7/3/2021  | .210 mgd |
| 7/6/2021  | .358 mgd |
| 7/21/2021 | .257 mgd |
| 8/4/2021  | .321 mgd |
| 8/19/2021 | .435 mgd |
| 8/20/2021 | .444 mgd |
| 8/20/2021 | .280 mgd |
| 8/27/2021 | .314 mgd |
| 8/31/2021 | .307 mgd |
| 9/2/2021  | .329 mgd |
| 9/7/2021  | .329 mgd |

On August 27, 2021, the Company installed a temporary parshall flume a) to assess whether the bucket tests were accurate, b) to obtain more accurate readings of water delivered at the distribution point, and c) to allow readings to be taken with greater ease. The Company intends to replace the temporary parshall flume with a permanent parshall flume after the location for placement of the permanent parshall flume and related structures is determined, the necessary structures and equipment are obtained and the structures and equipment are installed.

As of the date of this response, the temporary parshall flume readings were:

|           |          |
|-----------|----------|
| 8/27/2021 | .325 mgd |
| 8/31/2021 | .320 mgd |
| 9/2/2021  | .330 mgd |
| 9/7/2021  | .330 mgd |

Based on a comparison of these limited readings, the Company believes that the bucket test results likely were understated by between 1 and 10 percent, establishing compliance at the times of each bucket test except the first-time readings were taken. At the time of the first bucket test (July 3, 2021) the water level in the reservoir that serves the South Waikapu Ditch system was very low which resulted in a lower head pressure and less water being delivered through the pipe.

Finally, as to the comment of one set of users being preferred over another set of users in the South Waikapu Ditch system, the Company agrees that it consistently delivered more water to

the South Waikapu Auwai than to other users who receive water from the South Waikapu Ditch system. When there are sufficient flows in Waikapu Stream to allow for diversion into the South Waikapu Ditch system, the Company delivers about three times as much water to the South Waikapu Auwai than to all other users combined. The other users from the South Waikapu Ditch system receive deliveries for growing crops, watering livestock, and domestic use. These users, with a combined use of less than 100,000 gpd over the last year, communicated with the Company regularly and reduced use when the Company informed the users that stream flows in Waikapu Stream were reduced, which results in decreased flows into the South Waikapu Ditch system.

DAVID Y. IGE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
**COMMISSION ON WATER RESOURCE MANAGEMENT**  
P.O. BOX 621  
HONOLULU, HAWAII 96809

SUZANNE D. CASE  
CHAIRPERSON

MICHAEL G. BUCK  
ELIZABETH A. CHAR, M.D.  
NEIL J. HANNAHS  
AURORA KAGAWA-VIVIANI, PH.D.  
WAYNE K. KATAYAMA  
PAUL J. MEYER

M. KALEO MANUEL  
DEPUTY DIRECTOR

August 27, 2021

*Ref: CDR.5378.6*

Clayton Suzuki  
P.O. Box 2577  
Wailuku, HI 96793

Aloha Mr. Suzuki:

NOTICE OF COMPLAINT / DISPUTE RESOLUTION  
Lack of Water in the South Waikapū Kuleana ‘Auwai  
Waikapū Stream, Wailuku, Maui

This is to inform you that a complaint has been filed with the Commission on Water Resource Management (Commission) regarding a lack of water or no water flowing in the South Waikapū Kuleana ‘Auwai, which receives water from the South Waikapū Diversion Intake, Ditch, and Reservoir No. 1, managed collectively by Wailuku Water Company (WWC).

The Commission is formally forwarding a copy of the completed Complaint / Dispute Resolution Filing Form (Complaint) received electronically on August 11, 2021 and filed by Hui o Nā Wai ‘Ehā (Hui). The complaint alleges that WWC has prioritized other users of the South Waikapū Ditch system ahead of South Waikapū Kuleana ‘Auwai users, who have established appurtenant rights, and that WWC has failed to provide sufficient water to the South Waikapū Kuleana ‘Auwai.

As part of our investigation into the subject matter, the Commission staff are seeking your help to answer the following questions:

1. Per the Decision and Order by the Commission, you were awarded an existing use permit for 8,350 gpd for diversified agriculture and 2,500 gpd for domestic uses totaling 10,850 gpd. We understand you have a pipe that diverts water off the South Waikapū Kuleana ‘Auwai towards your property. Do you currently measure or gage the amount of water that you receive from the South Waikapū Kuleana ‘Auwai?
2. There may be a need for you to modify your pipe/diversion to ensure that you do not take more than your permitted amount. Have you considered how you intend to limit your diversion to allow more water to continue down the ‘auwai to other permitted users?
3. The Hui raised concerns about your use of sand filters and the release of “massive amounts of residue” into the ‘auwai when your sand filters are cleaned out. Is there a way for you to prevent the release of sediment back into the ‘auwai and utilize the backflushed water on your property?

October 19, 2021

Clayton Suzuki  
Notice of Complaint / Dispute Resolution  
August 27, 2021  
Page 2

We would appreciate a response by September 9, 2021. Following our investigation and discussions with various parties, the staff intends to take this matter to the Commission for further review and possible action at a future Commission meeting date. If you have any questions, please call our Stream Protection and Management Branch at (808) 587-0234.

Ola i ka wai,



M. KALEO MANUEL  
Deputy Director

Enclosures

cc: Hui o Nā Wai 'Ehā  
Wailuku Water Company



DAVID Y. IGE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
**COMMISSION ON WATER RESOURCE MANAGEMENT**  
P.O. BOX 621  
HONOLULU, HAWAII 96809

SUZANNE D. CASE  
CHAIRPERSON

MICHAEL G. BUCK  
ELIZABETH A. CHAR, M.D.  
NEIL J. HANNAHS  
AURORA KAGAWA-VIVIANI, PH.D.  
WAYNE K. KATAYAMA  
PAUL J. MEYER

M. KALEO MANUEL  
DEPUTY DIRECTOR

September 7, 2021

*Ref: CDR.5738.6*

Waikapu Properties, LLC  
MTP Operating Co., LLC  
Peter A. Horovitz, Esq.  
Kristine Tsukiyama, Esq.  
2145 Wells Street, Suite 303  
Wailuku, HI 96793  
[pah@mhmaui.com](mailto:pah@mhmaui.com)  
[kkt@mhmaui.com](mailto:kkt@mhmaui.com)  
[albertboyce@gmail.com](mailto:albertboyce@gmail.com)

Aloha:

NOTICE OF COMPLAINT / DISPUTE RESOLUTION  
Lack of Water in the South Waikapū Kuleana 'Auwai  
Waikapū Stream, Wailuku, Maui

This is to inform you that a complaint has been filed with the Commission on Water Resource Management (Commission) regarding a lack of water or no water flowing in the South Waikapū Kuleana 'Auwai, which receives water from the South Waikapū Diversion Intake, Ditch, and Reservoir No. 1, managed collectively by Wailuku Water Company (WWC).

The Commission is formally forwarding a copy of the completed Complaint / Dispute Resolution Filing Form (Complaint) received electronically on August 11, 2021 and filed by Hui o Nā Wai 'Ehā (Hui). The complaint alleges that WWC has prioritized other users of the South Waikapū Ditch system ahead of South Waikapū Kuleana 'Auwai users, who have established appurtenant rights, and that WWC has failed to provide sufficient water to the South Waikapū Kuleana 'Auwai.

As you are aware, on June 28, 2021, the Commission issued its Findings of Fact, Conclusions of Law, and Decision & Order in Contested Case Hearing CCH-MA15-01 (D&O). The D&O may be reviewed at: <https://dlnr.hawaii.gov/cwrn/newsevents/cch/cch-ma15-01/>.

In the Findings of Fact, p. 188, Line 427.m, it was noted that the counsel for Waikapu Properties subsequently entered into discussions with counsels for the Office of Hawaiian Affairs and Hui/Maui Tomorrow Foundation, Inc. Following those negotiations and in light of Waikapu Properties' abilities to re-allocate field usage because of the return of the 'Īao-Waikapū fields, it filed a first amendment to surface water use permit applications (SWUPA) 2356/2297N, 3471N, and 3472N, as follows:



South Waikapū 'Ditch Users  
September 7, 2021  
Page 2

1. Reduction in the request to 81,794 gpd, from Waikapū Stream, a 96 percent decrease.
2. Change in the types of crops being grown from coffee to organic produce and row crops.
3. Water requested from Waikapū Stream for Kumu Farms' 18 acres for organic row crops will continue only until such time as substitute fields are certified organic, at which time the water allocation for those 18 acres will be reduced to that necessary for drinking water for cattle at 250 gad.
4. Water requested for feed and forage for cattle to be replaced by drinking water only.
5. All farming operations will be relocated to areas makai of the Waihe'e Ditch such that no surface water is needed from Waikapū Stream other than 250 gad for drinking water for cattle.
6. Ho'aloa Farms will be entitled to water and harvest crops that are currently in-ground above Waihe'e Ditch and which utilize water

As part of our investigation into the subject matter, the Commission staff are seeking your help to answer the following questions:

1. What is the current status of organic crop certification for Kumu Farms, such that the water allocation for its 18 acres can be reduced to that necessary for drinking water for cattle at 250 gad only?
2. What is the current status of supplying water to current cattle for drinking water only, at a rate of 250 gad, and not for feed and forage?
3. What is the current status of relocating all farming operations to areas makai of the Waihe'e Ditch such that no surface water is needed from Waikapū Stream other than the 250 gad for drinking water for cattle?

We would appreciate a response by September 21, 2021. Following our investigation and discussions with various parties, the staff intends to take this matter to the Commission for further review and possible action at a future Commission meeting date. If you have any questions, please call our Stream Protection and Management Branch at (808) 587-0234.

Ola i ka wai,



M. KALEO MANUEL  
Deputy Director

Enclosures

cc: Hui o Nā Wai 'Ehā  
Wailuku Water Company

October 19, 2021

September 9, 2021

Clayton Suzuki  
P O Box 2577  
Wailuku, Hawaii 96793

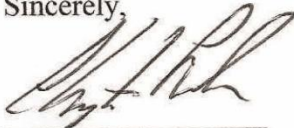
M Kaleo Manuel  
Deputy Director  
Commission on Water Resource Management  
P O Box 621  
Honolulu, Hawaii 96809

Dear Mr. Manuel,

This letter is in response to your letter of August 27, 2021. This is for items #1 & #2. The irrigation system for my land was designed to run sprinklers in the yard space and landscape and drip irrigation for the farm crops. I designed and constructed the system in 2003, with my background designing irrigation systems for Wailuku Water Company. All of the sprinklers are on timers, I have attached the schedule that I am currently irrigating with, for my yard, landscape and farm. I can meet my usage by running the system as shown, I may adjust the time for each set but keep within my allocation limit of 10,850 gpd. I hope this answers your question as to how I intend to meet my allocation.

Item #3, I flush my filter system daily with 6 minutes for the screen filters and 10 minutes for the sand filters. The screen filters run at 40 gpm or 240 gallons per flush and the sand filters run at 40 gpm or 400 gallons per flush for a total of 640 gallons. I was approached on this matter by CWRM years ago and met with Jeff Pearson and Dean Uyeno. The flush water was sent back into the kuleana ditch because that's where the water originates and it would be considered waste if I disposed the water elsewhere. They accepted my practice.

Sincerely,



Clayton Suzuki

| Suzuki Irrigation Schedule<br>Schedule A |         |                                  |                       |                  |                      |                     |          |
|--|---------|----------------------------------|-----------------------|------------------|----------------------|---------------------|----------|
| Area                                     | Section | Sprinklers                       | Flow/Sprinkler<br>gpm | Section<br>Timer | Gallons<br>per round | Gallons<br>per week |          |
| Front                                    | 1       | 10                               | 4                     | 30               | 1200                 |                     |          |
|  | 2       | 8                                | 4                     | 30               | 960                  |                     |          |
|  | 3       | 6                                | 4                     | 30               | 720                  |                     |          |
|  | 4       | 8                                | 4                     | 30               | 960                  |                     |          |
|  | 5       | 12                               | 4                     | 30               | 1440                 |                     |          |
|  | 6       | 8                                | 4                     | 30               | 960                  |                     |          |
|  | 7       | 8                                | 8                     | 40               | 2560                 |                     |          |
|  | 8       | 12                               | 4                     | 30               | 1440                 |                     |          |
|  |         |                                  |                       |                  | <hr/> 10240          | 20480               | 2 rounds |
| Back                                     | 1       | 10                               | 8                     | 40               | 3200                 |                     |          |
|  | 2       | 10                               | 8                     | 40               | 3200                 |                     |          |
|  | 3       | 12                               | 4                     | 35               | 1680                 |                     |          |
|  | 4       | 4                                | 2                     | 30               | 240                  |                     |          |
|  |         |                                  |                       |                  | <hr/> 8320           | 16640               | 2 rounds |
| Side                                     | 1       | 8                                | 4                     | 30               | 960                  |                     |          |
|  | 2       | 8                                | 4                     | 30               | 960                  |                     |          |
|  | 3       | 12                               | 4                     | 30               | 1440                 |                     |          |
|  | 4       | 8                                | 4                     | 30               | 960                  |                     |          |
|  |         |                                  |                       |                  | <hr/> 4320           | 8640                | 2 rounds |
| Farm                                     | 1       | Drip                             | 10                    | 2880             | 28800                | 28800               | weekly   |
|  | Misc    | Farm animals, washing crops, etc |                       |                  |                      | 1000                |          |
| Total                                    |         |                                  |                       |                  |                      | 75560               | per week |
| Allocation                               |         | 10850 per day                    |                       |                  |                      | 75950               | per week |

October 19, 2021



**Peter A. Horovitz**  
2073 Wells Street, Suite 101  
Wailuku, Hawaii 96793  
Phone 808.242.5700  
Fax 808.442.1255  
pah@mhmaui.com

**September 21, 2021**

Via U.S. Mail and Email

M. Kaleo Manuel  
Deputy Director  
Commission on Water Resource Management  
P.O. Box 621  
Honolulu, Hawaii 96809  
Email: [kaleo.l.manuel@hawaii.gov](mailto:kaleo.l.manuel@hawaii.gov)

**RE: Notice of Complaint / Dispute Resolution  
Waikapu Stream, Wailuku, Maui**

Dear Mr. Manuel:

Thank you for your letter dated September 7, 2021, informing us of the complaint filed with the Commission on Water Resource Management ("Commission"). Our responses to your request for additional information regarding the current status of various farming operations are below.

1. What is the current status of organic crop certification for Kumu Farms, such that the water allocation for its 18 acres can be reduced to that necessary for drinking water for cattle at 250 gad only?

Answer: It is our understanding that certain crops of Kumu Farms are certified organic. However, we are not aware of its complete certification status. Irrespective of their organic certification status, we are currently in discussions with Kumu Farms regarding the implementation of adequate infrastructure to transition water delivery off of Reservoir 1 and instead draw from the Waihe'e Ditch via an electric pump system.

2. What is the current status of supplying water to current cattle for drinking water only, at a rate of 250 gad, and not for feed and forage?

Answer: Water is being supplied only as drinking water to livestock; water is not being used for feed or forage. Livestock are owned by farming tenants, Makani Olu Ranch and Beef and Blooms. Makani Olu Ranch currently has 55 Texas Longhorn cattle, and Beef and Blooms has approximately 140-150 head of cattle.



September 21, 2021  
Page 2

Those numbers fluctuate based on field status and herd management practices, as is typical with ranching operations.

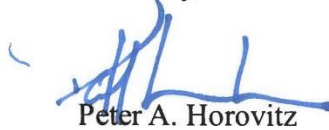
We have also been informed that the inundation of wild deer (that are able to hurdle over perimeter fencing) often impacts the amount of water available to livestock.

3. What is the current status of relocating all farming operations to areas makai of the Waihe'e Ditch such that no surface water is needed from Waikapu Stream other than the 250 gad for drinking water for cattle?

There are currently no farming operations on the mauka side of the Waihe'e Ditch. All farming operations have been moved to the makai side of the Waihe'e Ditch and/or to the makai side of Honoapiilani Highway. Kumu Farms is in the process of finalizing infrastructure that would allow it to transition to pumping water from the Waihe'e Ditch. Water available for cattle is negatively impacted by invasive deer, as noted.

Should you have any questions, please feel free to contact me.

Sincerely,



Peter A. Horovitz

cc: Kathy Yoda (via email: [kathy.s.yoda@hawaii.gov](mailto:kathy.s.yoda@hawaii.gov))  
Waikapu Properties LLC / MTP Operating Company, LLC